

Arnold B. Calmann (abc@saiber.com)

SAIBER LLC

One Gateway Center, Suite 1000

Newark, N.J. 07102

Telephone: (973) 622-3333

Facsimile: (973) 622-3349

John G. Froemming (froemmingj@howrey.com)

David M. Jaquette (jaquetted@howrey.com)

HOWREY LLP

1299 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 783-0800

Facsimile: (202) 383-6610

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BMW OF NORTH AMERICA, LLC and
BAYERISCHE MOTOREN WERKE AG,

Plaintiffs,

v.

ONYX ENTERPRISES INT’L CORP.,
ROMAN GERASHENKO, and
STANISLAV (“STEVEN”) ROYZENSHTEYN,

Defendants.

Civil Action No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND
COUNTERFEITING, UNFAIR
COMPETITION, AND CYBERSQUATTING**

JURY TRIAL DEMANDED

DOCUMENT FILED ELECTRONICALLY

Plaintiffs BMW of North America, LLC and Bayerische Motoren Werke AG
(collectively “BMW”), by way of complaint against the defendants, Onyx Enterprises Int’l
Corp., Roman Gerashenko, and Steven Royzenshteyn, allege as follows:

Nature of the Action

1. Plaintiffs seek injunctive and monetary relief from Defendants for trademark
infringement and counterfeiting, unfair competition, and cybersquatting with regard to various
trademarks of the Plaintiffs, including Plaintiffs’ famous Roundel logo, “BMW” word mark,

THE ULTIMATE DRIVING MACHINE mark, MINI mark, and MINI Wings logo, and Plaintiffs' Grille Design and "745" trademarks.

2. As alleged more fully below, Defendants have violated, and continue to violate, the Trademark Act of 1946 as amended, 15 U.S.C. §§ 1125 *et seq.* (the "Lanham Act"), and New Jersey state law through their illegal acquisition and use of the domain name www.formulabmwusa.com and sale at www.carid.com of infringing and counterfeit goods bearing BMW's trademarks.

Parties

3. Plaintiff BMW of North America, LLC ("BMW NA") is a Delaware limited liability company having its principal place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677. BMW NA is a wholly owned subsidiary of BMW (US) Holding Corporation, a Delaware corporation, which is a wholly owned subsidiary of Bayerische Motoren Werke AG ("BMW AG").

4. Plaintiff BMW AG is a corporation organized under the laws of the Federal Republic of Germany with its principal place of business at Petuelring 130, 80809 Munich, Germany. BMW AG designs and manufactures motor vehicles, parts, and other products for sale in Europe and for export and sale throughout the world.

5. Defendant Onyx Enterprises Int'l Corp. ("Onyx Enterprises") is a New Jersey corporation with its principal place of business at Eight-A Corporate Center, 1 Corporate Drive, Cranbury, NJ 08512. Defendant Onyx Enterprises Int'l Corp. is in the business of selling automotive parts and also does business as CarID at www.carid.com and Onyx Automotive at www.onyxautomotive.com.

6. Defendant Roman Gerashenko is the co-owner of Onyx Enterprises Int'l Corp., resides at 39 Dalton Avenue, Staten Island, NY 10306, and conducts business at 1 Corporate Drive, Cranbury, NJ 08512. Defendant Gerashenko has personally directed the activities herein.

7. Defendant Steven Royzenshteyn is the co-owner of Onyx Enterprises Int'l Corp., resides at 42 Westport Lane, Staten Island, New York 10314, and conducts business at 1

Corporate Drive, Cranbury, NJ 08512. Defendant Royzenshteyn has personally directed the activities herein.

Jurisdiction and Venue

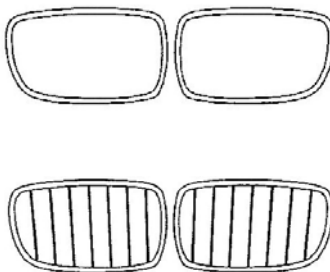
8. This Court has personal jurisdiction over Defendants because Defendant Onyx Enterprises is incorporated and located in the State of New Jersey, all Defendants conduct business in New Jersey, all Defendants have used the domain name www.formulabmwusa.com to transact business in the State of New Jersey, and the domain name www.formulabmwusa.com is registered to an address in the State of New Jersey.

9. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and 1338(b), and has supplemental jurisdiction under 28 U.S.C. § 1367(a) over BMW's claims under New Jersey state law.

10. Venue is proper in this District under 28 U.S.C. § 1391(b), as Defendants are located in this District and, upon information and belief, a substantial part of the events or omissions giving rise to the claims occurred and are occurring in this District.

BMW's Trademarks

11. BMW is in the business of designing, manufacturing, distributing and servicing motor vehicles, vehicle grilles, emblems and badges and a variety of other products under various trademarks, including the "BMW" word mark, THE ULTIMATE DRIVING MACHINE mark, "745" mark, MINI mark, and the famous Roundel logo, MINI Wings logo, and kidney-shaped engine grille design trademarks ("the BMW Grille Design") shown below:



12. BMW NA has been the exclusive licensee and authorized user of the Roundel logo and “BMW” word mark in the United States continuously since at least as early as 1949 in connection with the design, manufacture, sale and service of motor vehicles and assorted automotive parts.




13. BMW NA has been the exclusive licensee and authorized user of the THE ULTIMATE DRIVING MACHINE trademark in the United States continuously since at least as early as 1975 in connection with passenger cars and related products.





14. BMW NA has been the exclusive licensee and authorized user of the “745” mark in commerce in the United States continuously since at least as early as 2003 in connection with automobiles.





15. BMW NA has been the exclusive licensee and authorized user of the MINI mark and MINI Wings Logo in commerce in the United States continuously since at least as early as 2002 in connection with automobiles, parts and accessories therefor, and promotional items. BMW NA is authorized to institute this suit in order to enforce and protect its rights in connection with the foregoing marks as alleged herein, including but not limited to those in paragraphs 12 through 15.

16. Since long prior to the acts of Defendants complained of herein, BMW has also used the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo in connection with its business of designing, manufacturing, distributing, and servicing motor vehicles and a variety of other products in the State of New Jersey.

17. BMW AG is the owner of the following U.S. registrations for the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods/Services</u>
"BMW"	611,710	Sept. 6, 1955	Automobiles and motorcycles
"BMW"	1,164,922	Aug. 11, 1981	Motor vehicle repair and maintenance services and dealership services
"BMW"	1,627,241	Sept. 18, 1990	Clothing
"BMW"	2,816,178	Feb. 24, 2004	Metal key rings; vehicle parts; wheel stud locks; valve stem caps; license plate frames; vehicle seat covers; car covers; carry-all bags, floor mats
"BMW"	3,436,270	May 27, 2008	Leasing services for motor vehicles; retail and wholesale financing services for motor vehicles; credit card services; online personal banking; online customer banking services for credit card, loan, finance and lease accounts; loan services
	613,465	Oct. 4, 1955	Automobiles, motorcycles and parts thereof
	1,170,556	Sept. 22, 1981	Motor vehicle repair and maintenance services and dealership services
	1,450,212	Aug. 4, 1987	Vehicles and parts thereof not included in other classes, including but not limited to engines, vehicle registration plates, vehicle seats, car bodies and parts thereof, steering wheels, wheels, rims for vehicle wheels, valves for vehicle tires, mats, head rests, and vehicle accessories

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods/Services</u>
	2,752,258	Aug. 19, 2003	Vehicle parts, valve stem caps, metal key rings, and cleaning preparations
	3,418,573	Apr. 29, 2008	Leasing and financing services for motor vehicles; online credit applications and online banking; loan services
 (BMW Grille Design mark)	3,431,482	May 20, 2008	Motor vehicles
 (BMW Grille Design mark)	3,431,493	May 20, 2008	Motor vehicles
THE ULTIMATE DRIVING MACHINE	1,240,182	May 31, 1983	Automobiles
“745”	2,549,293	July 6, 2000	Automobiles
MINI	2,746,570	Aug. 5, 2003	Automobiles and structural parts therefor
MINI	2,826,013	March 23, 2004	Antifreeze Windshield cleaning fluids; automobile cleaning kits, comprising automobile cleaners, automobile wax, buckets, wheel cleaners, brushes, and cloths
MINI	3,507,903	Sept. 30, 2008	Automobiles and automobile parts such as steering wheels Clothing; metal key chains; sunglasses, toy vehicles, wallets

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods/Services</u>
	2,855,714	June 22, 2004	Clothing, namely shirts, sweatshirts, jackets, gloves, and headwear
	2,907,546	Dec. 7, 2004	Gloves; head wear, jackets; and shirts
	2,812,820	Feb. 10, 2004	Automobiles and structural parts therefor; automobile windshield sunshades; fitted car covers; valve stem caps for vehicle tires; floor and trunk mats for vehicles
	2,825,969	March 23, 2004	Antifreeze Windshield cleaning fluids; automobile cleaning kits, comprising automobile cleaners, automobile wax, buckets, wheel cleaners, brushes, and cloths

These registrations were duly and legally issued, and are valid and subsisting. Registrations 611,710; 1,164,922; 1,627,241; 2,816,178; 613,465; 1,170,556; 1,450,212; 2,752,258; 1,240,182; 2,549,293; 2,746,570; 2,826,013; 2,855,714; 2,907,546; 2,812,820; and 2,825,969 are incontestable pursuant to 15 U.S.C. § 1065.

18. BMW NA distributes its passenger cars and vehicle parts and provides maintenance services for its customers through nationwide networks of authorized dealers and service providers. BMW NA authorizes its BMW dealerships to use the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, and “745” mark in connection with the sale and/or service of BMW products, and authorizes its MINI dealerships to use the MINI word mark and MINI Wings logo in connection with the sale and/or service of MINI products.

19. To create and maintain goodwill among its customers, BMW has taken substantial steps to assure that all authorized BMW and MINI dealers and service providers using these marks are of the highest quality.

20. Beginning at least as early as 1998, BMW began using its “BMW” word mark within various Internet domain names through which customers access BMW’s commercial websites. Through these websites, BMW provides information to its customers and markets a variety of products and services.

21. BMW has sold hundreds of thousands of motor vehicles in the United States under its Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo.

22. BMW has expended millions of dollars in advertising efforts across the country in connection with the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo—including advertising of its Formula One racing team.

23. As a result of its long use and promotion of the Roundel logo, “BMW” mark, MINI mark, and MINI Wings logo, BMW has established these marks as famous and distinctive marks among members of the general American public.

BMW’s Formulabmwusa.com Website

24. BMW has been an active participant in Formula One car racing since the sport’s inception in the 1950s. “Formula One” is a well-known and widely-publicized series of international racing events in which various automobile manufacturers enter top-performing vehicles.

25. Over the last decade, BMW co-sponsored its own Formula One team. BMW maintained an official website at www.formulabmwusa.com to advertise its Formula One team, results, and news.

26. BMW displayed its official corporate badge at www.formulabmwusa.com with BMW’s Roundel logo and THE ULTIMATE DRIVING MACHINE mark. BMW operated and provided content for this website through an outside vendor.

27. In 2009, BMW decided to discontinue its involvement in Formula One in order to focus its efforts on other motorsport activities.

Defendants' Wrongful Activities

28. Later, in 2009, Defendants procured the domain name www.formulabmwusa.com from BMW's outside vendor without authorization from BMW and resumed displaying BMW's official corporate badge, with BMW's Roundel logo and THE ULTIMATE DRIVING MACHINE mark, giving the misimpression that BMW still sponsored the website. *See* Exh. 1.

29. Defendants currently own or control the domain name www.formulabmwusa.com, which is registered to a fictitious name, "Alex Kniz", at an address that does not exist, 556 Lincoln Street, Carlstadt, New Jersey 07072.

30. Upon information and belief, Defendants have gained access to BMW's website content management system and are displaying content relating to BMW's Formula One racing team and motorsport activities, including content that BMW previously displayed at this website. *Id.*

31. BMW sent Defendants a request to turn over www.formulabmwusa.com to BMW and to cease displaying BMW's trademarked material, but Defendants did not respond.

32. Defendants have also resumed displaying the look and feel of BMW's former website but have added a new contact name, "John Wilson" at expert@formulabmwusa.com, under the guise of it being a BMW official. *Id.*

33. Defendants have bad-faith intent to profit from their unauthorized use of "BMW" in the domain name www.formulabmwusa.com.

34. Defendants are also advertising, offering for sale and selling mesh grille overlays and badges at www.carid.com that bear identical or substantially indistinguishable copies of BMW's Grille Design, Roundel logo, and "745" mark, even though these products are not made or authorized by BMW. *See* Exh. 2.

35. Defendants are making commercial use at www.carid.com of BMW's Roundel logo and MINI Wings logo. *See* Exh. 3.

36. Defendants are calling their products "BMW Lambo Doors," "BMW Grilles," "MINI Accessories" and the like, even though their products are not made or authorized by the BMW Group. *Id.*

37. Defendants are not affiliated with or sponsored by BMW, and have never been authorized by BMW or any of its subsidiaries, affiliates, or authorized agents to use BMW's marks in any form.

38. Defendants have never provided services for BMW or any of its subsidiaries, affiliates, or authorized agents.

39. Defendants' unauthorized use of the Roundel logo, "BMW" word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, "745" mark, MINI mark, and MINI Wings logo in the manner described above:

- (a) is likely to cause confusion, to cause mistake, and/or to deceive customers and potential customers as to the origin, sponsorship, or approval of Defendants' website at www.formulabmwusa.com and products sold at www.carid.com, or as to some affiliation, connection, or association of Defendants with BMW;
- (b) enables Defendants to trade on and receive the benefit of goodwill BMW built up at great labor and expense over many years, and to gain acceptance for Defendants' websites and products not solely on their own merits, but on the reputation and goodwill of BMW, its trademarks, and its products and services;
- (c) unjustly enriches Defendants; and
- (d) unlawfully removes from BMW the ability to control the nature and quality of products provided under BMW's trademarks and places the

goodwill and valuable reputation of BMW in the hands of Defendants,
over whom BMW has no control.

40. BMW has been damaged and continues to be damaged by Defendants' unauthorized use of the Roundel logo, "BMW" word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, "745" mark, MINI mark, and MINI Wings logo in the manner described above.

41. Unless these acts of Defendants are restrained by this Court, they will continue to cause irreparable injury to BMW and to the public for which there is no adequate remedy at law.

Count I
Federal Trademark Infringement and Counterfeiting
(Lanham Act § 32, 15 U.S.C. § 1114(1))

42. BMW realleges and incorporates the allegations set forth in paragraphs 1 through 41 herein.

43. Defendants' use of BMW's Roundel logo, "BMW" word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, "745" mark, MINI mark, and MINI Wings logo in connection with their website at www.formulabmwusa.com and their sale of mesh grille overlays and badges at www.carid.com is likely to cause confusion, cause mistake, or deceive customers as to the source or sponsorship of Defendants' websites, company and products.

44. Defendants' sale of non-genuine BMW mesh grille overlays in the identical shape of BMW's federally trademarked grille design constitutes trademark counterfeiting. BMW AG owns trademark registrations for its Grille Design (Reg. Nos. 3,431,482 and 3,431,493), and uses these marks in connection with grilles.

45. The acts of Defendants complained of herein constitute use in commerce of reproductions, copies, or colorable imitations of BMW's federally registered Roundel logo, "BMW" word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark,

“745” mark, MINI mark, and MINI Wings logo in connection with the sale, offering for sale, distribution and advertising of goods and services in violation of 15 U.S.C. § 1114(1).

46. Defendants’ acts complained of herein have been deliberate, willful, and intentional, with full knowledge and in conscious disregard of BMW’s rights in its marks and with intent to trade off BMW’s vast goodwill in its marks.

47. As a result of the foregoing alleged actions of Defendants, BMW has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, BMW will continue to suffer injury and damage.

Count II
Federal Unfair Competition and False Designation of Origin
(Lanham Act § 43(a), 15 U.S.C. § 1125)

48. BMW realleges and incorporates the allegations set forth in paragraphs 1 through 47 herein.

49. Defendants’ unauthorized use of the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo in connection with their website at www.formulabmwusa.com and in connection with the advertising and sale of infringing mesh grille overlays and badges at www.carid.com falsely indicates that Defendants and their websites and products are connected with, sponsored by, affiliated with, or related to BMW.

50. Defendants’ unauthorized use of the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo has caused, and is likely to continue to cause confusion, mistake, or deception as to the source or sponsorship of Defendants and their websites and products.

51. Defendants’ unauthorized use of the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and

MINI Wings logo has diminished the goodwill in BMW's marks which BMW has built up at great labor and expense.

52. The acts of Defendants complained of herein constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

53. Defendants' acts complained of herein have been deliberate, willful, and intentional, with full knowledge and in conscious disregard of BMW's rights in its marks.

54. As a result of the foregoing alleged actions of Defendants, BMW has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, BMW will continue to suffer injury and damage.

Count III
Violation of the Anticybersquatting Consumer Protection Act
(Lanham Act § 43(d), 15 U.S.C. § 1125(d))

55. BMW realleges and incorporates the allegations set forth in paragraphs 1 through 54 herein.

56. The domain name www.formulabmwusa.com owned by Defendants incorporates the "BMW" mark.

57. The "BMW" mark was famous and distinctive at the time of the registration of www.formulabmwusa.com.

58. Upon information and belief, Defendants' acquisition and use of this domain name has been and is in bad faith, in that the acquisition and use occurred (i) with full knowledge and conscious disregard of BMW's rights in the "BMW" mark, (ii) with full knowledge of the split between BMW and its outside website vendor, and that Defendants did not have permission to take this domain and unlawfully access BMW's content management system; and (iii) with an intent to profit from BMW's vast goodwill in this mark.

59. The acts of Defendants complained of herein constitute cybersquatting in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

60. As a result of the foregoing alleged actions, BMW has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, BMW will continue to suffer injury and damage.

Count IV
Unfair Competition
(New Jersey Unfair Competition Act, N.J.S.A. 56:4-1 et seq.)

61. BMW realleges and incorporates the allegations set forth in paragraphs 1 through 60 herein.

62. The acts of Defendants complained of herein constitute unfair competition in violation of New Jersey Unfair Competition Act, N.J.S.A. 56:4-1 *et seq.*, as Defendants have misappropriated the Roundel logo, “BMW” word mark, BMW Grille Design, THE ULTIMATE DRIVING MACHINE mark, “745” mark, MINI mark, and MINI Wings logo for their own use.

63. As a result of the foregoing alleged actions of Defendants, Defendants have been unjustly enriched and BMW has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, BMW will continue to suffer injury and damage.

Count V
Trademark Infringement and Unfair Competition
(Common Law of New Jersey)

64. BMW realleges and incorporates the allegations set forth in paragraphs 1 through 63 herein.

65. The acts of Defendants complained of herein constitute trademark infringement and unfair competition in violation of the common law of New Jersey.

66. Defendants’ use of the infringing marks as described above has caused, is causing and, unless enjoined by this Court, will continue to cause confusion and mistake in the marketplace and deception of the trade and public as to the relationship or affiliation of the

parties and the source, origin, or sponsorship of www.formulabmwusa.com and Defendants' websites and products.

67. Defendants' use of the infringing marks as described above has impaired, is impairing and, unless enjoined by this Court, will continue to impair BMW's reputation under its trademarks and has caused, is causing and, unless enjoined by this Court, will continue to cause injury and damage to BMW for which BMW is entitled to relief under the common law.

68. As a result of the foregoing actions of Defendants, BMW has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, BMW will continue to suffer injury and damage.

Prayer For Relief

WHEREFORE, BMW prays that:

1. Judgment be entered for BMW on its claims.
2. Defendants, their agents, owners, servants, employees, related entities, attorneys, successors, assigns, and all others in active concert or participation with any of them, be enjoined and restrained, during the pendency of this action, and permanently thereafter, from:
 - (a) using www.formulabmwusa.com or any other domain name, trade name, or mark that includes the letters "BMW" or that is otherwise similar to the "BMW" word mark or any other mark or designation of BMW or its affiliates;
 - (b) selling, transferring, or redirecting the domain name www.formulabmwusa.com to any other person, entity, or website;
 - (c) registering any other domain names that incorporate "BMW" or any other trademark of BMW's;
 - (d) displaying BMW's Roundel logo, MINI Wings logo, or any other BMW logo or colorable imitation thereof, in connection with their or any business;

- (e) manufacturing, purchasing, brokering, importing, advertising, offering for sale, distributing, selling, marketing or promoting non-genuine BMW products that display or otherwise bear any BMW trademarks or colorable imitations thereof;
- (f) using BMW's trademarks or colorable imitations thereof as or in the names, titles, and listings of Defendants' products or others' products not made or authorized by BMW; and
- (g) doing any other act or thing likely to confuse, mislead, or deceive others into believing that Defendants or their websites, related entities, or products are affiliated with, sponsored by, or approved by BMW.

3. An accounting be directed to determine any and all of Defendants' sales and profits and BMW's losses resulting from Defendants' activities, and that all such sales or profits and any non-duplicative losses be paid over to BMW and increased as the Court finds to be just under the circumstances of this case.

4. Defendants be required to pay over to BMW, in accordance with Section 35 of the United States Trademark Act, 15 U.S.C. § 1117(a)-(d):

- (a) in accordance with Section 35 of the United States Trademark Act, 15 U.S.C. § 1117(a) and (b), an award of treble BMW's actual damages and Defendants' profits;
- (b) in accordance with Section 35 of the United States Trademark Act, 15 U.S.C. § 1117(b) and (c), statutory damages up to \$2 million per counterfeit mark per type of counterfeit good sold by Defendants, offered for sale, or distributed by Defendants, resulting from Defendants' intentional use of BMW's federally registered trademarks in connection with the sale of products that are not made or authorized by BMW;
- (c) statutory damages of \$100,000 relating to Defendants' unlawful acts of cybersquatting; and

(d) BMW's reasonable attorneys' fees and costs of this action.

5. Defendants, in accordance with Section 36 of the United States Trademark Act, 15 U.S.C. § 1118, be required to deliver to BMW for destruction all domain name registrations, papers, signs, labels, prints, packages, advertising, or other promotional materials in Defendants' possession or control bearing BMW's trademarks.

6. Defendants, in accordance with Section 34(a) of the United States Trademark Act, 15 U.S.C. § 1116(a), be required to file with the Court, and serve upon BMW, within thirty (30) days after the entry and service on Defendants of an injunction, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the terms of such injunction.

7. Defendants, in accordance with Section 43(d) of the United States Trademark Act, 15 U.S.C. § 1125(d), be required to forfeit or cancel the www.formulabmwusa.com domain name or transfer the same at Plaintiffs' election to BMW.

8. BMW recover such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

BMW hereby demand a trial by jury of all issues so triable.

Dated: August 6, 2010

Respectfully submitted,

SAIBER LLC

Attorneys for Plaintiffs BMW of North
America, LLC and Bayerische Motoren Werke
AG

/s/ Arnold B. Calmann

Arnold B. Calmann (abc@saiber.com)
One Gateway Center, Suite 1000
Newark, NJ 07102
Tel: (973) 622-3333

John G. Froemming (froemmingj@howrey.com)

David M. Jaquette (jaquetted@howrey.com)

HOWREY LLP

1299 Pennsylvania Avenue, N.W.

Washington, DC 20004

Tel: (202) 783-0800

LOCAL CIVIL RULE 11.2 CERTIFICATION

Under Local Civil Rule 11.2, the undersigned counsel for Plaintiffs hereby certifies that this matter is not the subject of any other action asserted by Plaintiffs herein in any court, or of any pending arbitration or administrative proceeding.

Dated: August 6, 2010

SAIBER LLC

Attorneys for Plaintiffs BMW of North
America, LLC and Bayerische Motoren Werke
AG

/s/ Arnold B. Calmann

Arnold B. Calmann (abc@saiber.com)
One Gateway Center, Suite 1000
Newark, NJ 07102
Tel: (973) 622-3333

John G. Froemming (froemmingj@howrey.com)
David M. Jaquette (jaquetted@howrey.com)

HOWREY LLP

1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
Tel: (202) 783-0800

LOCAL CIVIL RULE 201.1 CERTIFICATION

Under Local Civil Rule 201.1, the undersigned counsel for Plaintiffs hereby certifies that they seek both monetary damages greater than \$150,000 and injunctive relief, and therefore this action is not appropriate for compulsory arbitration.

Dated: August 6, 2010

SAIBER LLC

Attorneys for Plaintiffs BMW of North
America, LLC and Bayerische Motoren Werke
AG

/s/ Arnold B. Calmann

Arnold B. Calmann (abc@saiber.com)
One Gateway Center, Suite 1000
Newark, NJ 07102
Tel: (973) 622-3333

John G. Froemming (froemmingj@howrey.com)
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